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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,096	02/19/2004	Wei Chen	U 015037-6	3538
140	7590	01/18/2006	EXAMINER	
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			BROWN, JENNINE M	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/783,096

Applicant(s)

CHEN ET AL.

Examiner

Jennine M. Brown

Art Unit

1755

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

J.A. LORENZO
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.


Applicant's composite carrier, catalyst carrier and catalyst component, comprising magnesium halide and particles of a silica material, said silica material having an average particle size of less than 10 microns. Applicant defines "magnesium halide" in their specification on page 6 as "Mg(OR₁)₂-mX_m in which R₁ are identical or different, and are linear, branched or cyclic alkyl having 1 to 14 carbon atoms, X are selected from the group consisting of F, Cl, Br and mixture thereof and m is 1 or 2. Examples include but are not limited to ... magnesium phenoxide chloride, magnesium isopropoxide chloride, magnesium butoxide chloride and the like ...". Therefore prior art which uses alkoxy magnesium halide would inherently meet applicant's "magnesium halide". Morini, et al. discloses the equivalence of Grignard (RMgX) compound, dialkyl magnesium compound (MgR₂), magnesium chloride (MgCl₂), magnesium dialkoxy (Mg(OR)₂), and magnesium alkoxy halides (X_nMg(OR)_{2-n}) in column 6, line 66 - column 7, line 11. Furthermore, with regard to the solubility of the magnesium compounds, the examiner cites Mehta (US 4820672 A) in evidence to rebut applicant's allegations that the magnesium compounds are not soluble in hydrocarbon solvent or inert liquid medium as shown in Table II (col. 12, l. 56-col. 13, l. 38. Since it is very possible and known that there are hydrocarbon soluble magnesium chloride complexes and that alkoxy magnesium chloride can be used in place of the magnesium dialkoxide or dialkyl magnesium, it would have been obvious to one of ordinary skill in the art to modify the catalyst composition of Spencer, et al. to use the activated magnesium halide and the 1,3-diether compound of Morini, et al. as previously argued because one does not need to change solvent media, contrary to applicant's allegations.

The proposed modification does not render the combination inoperable therefore, as stated in the previous grounds of rejection, the Examiner has provided a prima facie case of obviousness.

Applicant's arguments with regard to the unpredictability of the preparation of an effective catalyst are noted but do not add patentable weight to the claims, per se. Applicant is not claiming a polymer having broad molecular weight distribution, but the catalyst and precursor thereof. Catalysts with the same composition may be used for widely varying catalytic processes and without experimentation, the examiner cannot make a comparative determination of the products produced therefrom, therefore the only determination can be made from the materials which are claimed as present in the composition of the catalyst and their similarity to that of the prior art.

Furthermore, based on MPEP 2144.06, it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose where the idea of combining them flows logically from their having been individually taught in the prior art.

Based on the arguments given herein above, the previous rejections have been maintained.


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